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1 A bill to be entitled

2 An act relating to forensic treatment and training;
3 amending s. 916.105, F.S.; revising legislative intent
4 with respect to the treatment or training of defendants
5 who have mental illness, mental retardation, or autism and
6 are committed to the Agency for Persons with Disabilities;
7 providing intent with respect to the use of restraint and
8 seclusion; amending s. 916.106, F.S.; providing and
9 revising definitions; amending s. 916.107, F.S., relating
10 to the rights of forensic clients; conforming provisions
11 to the transfer of duties from the Developmental
12 Disabilities Program Office within the Department of
13 Children and Family Services to the Agency for Persons
14 with Disabilities; revising provisions governing the
15 involuntary treatment of clients; requiring the
16 coordination of services between the department, the
17 agency, and the Department of Corrections; amending s.
18 916.1075, F.S.; revising certain prohibitions on sexual
19 misconduct involving covered persons of the Department of
20 Children and Family Services or the Agency for Persons
21 with Disabilities; defining the term "covered person";
22 requiring that notice of sexual misconduct be provided to
23 the inspector general of the agency or department;
24 amending s. 916.1081, F.S.; providing that an escape or an
25 attempt to escape from a civil or forensic facility
26 constitutes a second-degree felony; amending s. 916.1085,
27 F.S.; providing for certain prohibitions concerning
28 contraband articles to apply to facilities under the
29 supervision or control of the Agency for Persons with

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30 Disabilities; deleting a cross-reference; amending s.
31 916.1091, F.S.; authorizing the use of chemical weapons by
32 agency personnel; amending s. 916.1093, F.S.; authorizing
33 the agency to enter into contracts and adopt rules;
34 requiring department and agency rules to address the use
35 of restraint and seclusion; providing requirements for
36 such rules; amending s. 916.111, F.S.; revising provisions
37 governing the training of mental health experts; amending
38 s. 916.115, F.S.; requiring that the court appoint experts
39 to determine the mental condition of a criminal defendant;
40 requiring that the Department of Children and Family
41 Services annually provide the courts with a list of
42 certain mental health professionals; amending s. 916.12,
43 F.S.; revising provisions governing the evaluation of a
44 defendant's competence to proceed; amending s. 916.13,
45 F.S.; revising conditions under which a defendant may be
46 involuntarily committed for treatment; amending s.
47 916.145, F.S., relating to dismissal of charges against a
48 defendant adjudicated incompetent; conforming provisions
49 to changes made by the act; amending s. 916.15, F.S.;
50 clarifying that the determination of not guilty by reason
51 of insanity is made under a specified Florida Rule of
52 Criminal Procedure; amending s. 916.16, F.S.; providing
53 for the continuing jurisdiction of the court over a
54 defendant involuntarily committed due to mental illness;
55 amending s. 916.17, F.S.; clarifying circumstances under
56 which the court may order the conditional release of a
57 defendant; amending s. 916.301, F.S.; requiring that
58 certain evaluations be conducted by certain qualified

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59 experts; requiring that the Agency for Persons with
60 Disabilities provide the court with a list of certain
61 available retardation and autism professionals; conforming
62 provisions to the transfer of duties from the
63 Developmental Disabilities Program Office within the
64 Department of Children and Family Services to the agency;
65 amending s. 916.3012, F.S.; clarifying provisions
66 governing the determination of a defendant's mental
67 competence to proceed; amending s. 916.302, F.S., relating
68 to the involuntary commitment of a defendant; conforming
69 provisions to the transfer of duties from the
70 Developmental Disabilities Program Office within the
71 Department of Children and Family Services to the agency;
72 requiring that the department and agency submit an
73 evaluation to the court before the transfer of a defendant
74 from one civil or forensic facility to another; amending
75 s. 916.3025, F.S.; clarifying that the committing court
76 retains jurisdiction over a defendant placed on
77 conditional release; providing for the transfer of
78 continuing jurisdiction to another court where the
79 defendant resides; amending s. 916.303, F.S.; clarifying
80 provisions governing the dismissal of charges against a
81 defendant found to be incompetent to proceed due to
82 retardation or autism; amending s. 916.304, F.S.;
83 providing for the conditional release of a defendant to a
84 civil facility; amending ss. 921.137 and 985.223, F.S.,
85 relating to provisions governing the imposition of the
86 death sentence upon a defendant with mental retardation
87 and the determination of incompetency in cases involving

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juvenile delinquency; conforming provisions to the transfer of duties from the Developmental Disabilities Program Office within the Department of Children and Family Services to the Agency for Persons with Disabilities; amending ss. 287.057, 408.036, 943.0585, and 943.059, F.S.; conforming cross-references; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 916.105, Florida Statutes, is amended to read:

916.105 Legislative intent.--

(1) It is the intent of the Legislature that the Department of Children and Family Services and the Agency for Persons with Disabilities, as appropriate, establish, locate, and maintain separate and secure forensic facilities and programs for the treatment or training of defendants who have been ~~are~~ charged with a felony and who have been found to be incompetent to proceed due to their mental illness, mental retardation, or autism, or who have been acquitted of a felony ~~felonies~~ by reason of insanity, and who, while still under the jurisdiction of the committing court, are committed to the department or agency under the provisions of this chapter. Such ~~The separate, secure~~ facilities shall be sufficient to accommodate the number of defendants committed under the conditions noted above.7 Except for those defendants found by the department or agency to be appropriate for treatment or training in a civil ~~treatment~~ facility or program pursuant to subsection (3), forensic. ~~Such~~

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secure facilities shall be designed and administered so that ingress and egress, together with other requirements of this chapter, may be strictly controlled by staff responsible for security in order to protect the defendant, facility personnel, other clients, and citizens in adjacent communities.

(2) It is ~~further~~ the intent of the Legislature that treatment or training programs for defendants who are found to have mental illness, mental retardation, or autism ~~are found to be mentally ill, retarded, or autistic~~ and are involuntarily committed to the department or agency, and who are still under the jurisdiction of the committing court, be provided in ~~such~~ a manner, subject to security requirements and other mandates of this chapter, as to ensure the rights of the defendants as provided in this chapter.

(3) It is the intent of the Legislature that evaluation and services to defendants who have mental illness, mental retardation, or autism ~~are mentally ill, retarded, or autistic~~ be provided in community settings, in community residential facilities, or in civil, ~~nonforensic~~ facilities, whenever this is a feasible alternative to treatment or training in a state forensic facility.

(4) It is the intent of the Legislature to minimize and achieve an ongoing reduction in the use of restraint and seclusion in forensic facilities serving persons with developmental disabilities.

Section 2. Section 916.106, Florida Statutes, is amended to read:

916.106 Definitions.--For the purposes of this chapter, the term:

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146 (1) "Agency" means the Agency for Persons with
147 Disabilities. The agency is responsible for training forensic
148 clients who are developmentally disabled due to mental
149 retardation or autism and have been determined incompetent to
150 proceed.

151 (2)~~(1)~~ "Autism" has the same meaning as in s. 393.063.
152 ~~means a pervasive, neurologically based developmental disability~~
153 ~~of extended duration which causes severe learning, communication,~~
154 ~~and behavior disorders, with the age of onset of autism occurring~~
155 ~~during infancy or childhood. Individuals with autism exhibit~~
156 ~~impairment in reciprocal social interaction, impairment in verbal~~
157 ~~and nonverbal communication and imaginative ability, and a~~
158 ~~markedly restricted repertoire of activities and interests.~~

159 (3)~~(2)~~ "Chemical weapon" means any shell, cartridge, bomb,
160 gun, or other device capable of emitting chloroacetophenone (CN),
161 chlorobenzalmalononitrile (CS) or any derivatives thereof in any
162 form, or any other agent with lacrimatory properties, and shall
163 include products such as that commonly known as "mace."

164 (4)~~(3)~~ "Civil facility" means:

165 (a) A mental health facility established within the
166 department or by contract with the department to serve
167 individuals committed pursuant to chapter 394 and those
168 defendants committed pursuant to this chapter who do not require
169 the security provided in a forensic facility; or—

170 (b) An intermediate care facility for the developmentally
171 disabled, a foster care facility, a group home facility, or a
172 supported living setting, as defined in s. 393.063, designated by
173 the agency to serve those defendants who do not require the
174 security provided in a forensic facility.

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175 ~~(5)-(4)~~ "Court" means the circuit court.

176 (6) "Defendant" means an adult, or a juvenile who is
177 prosecuted as an adult, who has been arraigned and charged with a
178 felony offense under the laws of this state.

179 ~~(7)-(5)~~ "Department" means the Department of Children and
180 Family Services. The department is responsible for the treatment
181 of forensic clients who have been determined incompetent to
182 proceed due to mental illness or who have been acquitted of a
183 felony by reason of insanity.

184 ~~(8)-(6)~~ "Express and informed consent" or "consent" means
185 consent given voluntarily in writing after a conscientious and
186 sufficient explanation and disclosure of the purpose of the
187 proposed treatment, the common side effects of the treatment, if
188 any, the expected duration of the treatment, and any alternative
189 treatment available.

190 ~~(9)-(7)~~ "Forensic client" or "client" means any defendant
191 who has been ~~is mentally ill, retarded, or autistic and who is~~
192 committed to the department or agency pursuant to s. 916.13, s.
193 916.15, or s. 916.302. ~~this chapter and.~~

194 ~~(a) Who has been determined to need treatment for a mental~~
195 ~~illness or training for retardation or autism;~~

196 ~~(b) Who has been found incompetent to proceed on a felony~~
197 ~~offense or has been acquitted of a felony offense by reason of~~
198 ~~insanity;~~

199 ~~(c) Who has been determined by the department to:~~

200 ~~1. Be dangerous to himself or herself or others; or~~

201 ~~2. Present a clear and present potential to escape; and~~

202 ~~(d) Who is an adult or a juvenile prosecuted as an adult.~~

203 (10)-(8) "Forensic facility" means a separate and secure

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204 facility established within the department or agency to serve
205 forensic clients. A ~~Such~~ separate and secure facility means a
206 ~~facilities shall be~~ security-grade building for the purpose of
207 separately housing persons who have mental illness from persons
208 with retardation or autism and separately housing persons who
209 have been involuntarily committed pursuant to this chapter from
210 nonforensic residents buildings located on grounds distinct in
211 location from other facilities for persons who are mentally ill.
212 ~~The Florida State Hospital shall not be required to maintain~~
213 ~~separate facilities for mentally ill, retarded, or autistic~~
214 ~~defendants who are found incompetent to proceed or who are~~
215 ~~acquitted of a criminal offense by reason of insanity.~~

216 (11)-(9)- "Incompetent to proceed" means unable to proceed at
217 any material stage of a criminal proceeding, which shall include
218 trial of the case, pretrial hearings involving questions of fact
219 on which the defendant might be expected to testify, entry of a
220 plea, proceedings for violation of probation or violation of
221 community control, sentencing, and hearings on issues regarding a
222 defendant's failure to comply with court orders or conditions or
223 other matters in which the mental competence of the defendant is
224 necessary for a just resolution of the issues being considered.

225 (12)-(10)- "Institutional security personnel" means the staff
226 of forensic facilities ~~members~~ who meet or exceed the
227 requirements of s. 943.13 and who are responsible for providing
228 security, protecting ~~for protection of~~ clients and personnel,
229 enforcing ~~for the enforcement of~~ rules, preventing and
230 investigating ~~for prevention and investigation of~~ unauthorized
231 activities, and ~~for~~ safeguarding the interests of citizens in the
232 surrounding communities.

233 (13) ~~(11)~~ "Mental illness" means an impairment of the
234 emotional processes that exercise conscious control of one's
235 actions, or of the ability to perceive or understand reality,
236 which impairment substantially interferes with a defendant's
237 ability to meet the ordinary demands of living. For the purposes
238 of this chapter, the term does not apply to defendants with only
239 mental retardation or autism ~~who are solely retarded or autistic,~~
240 and does not include intoxication or conditions manifested only
241 by antisocial behavior or substance abuse impairment.

242 (14) "Restraint" means a physical device, method, or drug
243 used to control dangerous behavior.

244 (a) A physical restraint is any manual method or physical
245 or mechanical device, material, or equipment attached or adjacent
246 to an individual's body so that he or she cannot easily remove
247 the restraint and that restricts freedom of movement or normal
248 access to his or her body.

249 (b) A drug used as a restraint is a medication used to
250 control a person's behavior or to restrict his or her freedom of
251 movement and is not a standard treatment for the person's medical
252 or psychiatric condition. Physically holding a person during a
253 procedure to forcibly administer psychotropic medication is a
254 physical restraint.

255 (c) Restraint does not include physical devices, such as
256 orthopedically prescribed appliances, surgical dressings and
257 bandages, supportive body bands, or other physical holding when
258 necessary for routine physical examinations and tests; for
259 purposes of orthopedic, surgical, or other similar medical
260 treatment; when used to provide support for the achievement of
261 functional body position or proper balance; or when used to

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262 protect a person from falling out of bed.

263 (15) ~~(12)~~ "Retardation" has the same meaning as in s.
264 393.063. ~~means significantly subaverage general intellectual~~
265 ~~functioning existing concurrently with deficits in adaptive~~
266 ~~behavior and manifested during the period from conception to age~~
267 ~~18. "Significantly subaverage general intellectual functioning,"~~
268 ~~for the purpose of this definition, means performance which is~~
269 ~~two or more standard deviations from the mean score on a~~
270 ~~standardized intelligence test specified in the rules of the~~
271 ~~department. "Adaptive behavior," for the purpose of this~~
272 ~~definition, means the effectiveness or degree with which an~~
273 ~~individual meets the standards of personal independence and~~
274 ~~social responsibility expected of the individual's age, cultural~~
275 ~~group, and community.~~

276 (16) "Seclusion" means the physical segregation of a person
277 in any fashion or the involuntary isolation of a person in a room
278 or area from which the person is prevented from leaving. The
279 prevention may be by physical barrier or by a staff member who is
280 acting in a manner, or who is physically situated, so as to
281 prevent the person from leaving the room or area. For purposes of
282 this chapter, the term does not mean isolation due to a person's
283 medical condition or symptoms, the confinement in state mental
284 health treatment facilities to a bedroom or area during normal
285 hours of sleep when there is not an active order for seclusion,
286 or during an emergency such as a riot or hostage situation when
287 clients may be temporarily placed in their rooms for their own
288 safety.

289 (17) ~~(13)~~ "Social service professional," for the purposes of
290 ~~part III,~~ means a person whose minimum qualifications include a

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291 bachelor's degree and at least 2 years of social work, clinical
292 practice, special education, habilitation, or equivalent
293 experience working directly with persons with retardation,
294 autism, or other developmental disabilities.

295 Section 3. Section 916.107, Florida Statutes, is amended to
296 read:

297 916.107 Rights of forensic clients.--

298 (1) RIGHT TO INDIVIDUAL DIGNITY.--

299 (a) The policy of the state is that the individual dignity
300 of the client shall be respected at all times and upon all
301 occasions, including any occasion when the forensic client is
302 detained, transported, or treated. Clients with mental illness,
303 retardation, or autism ~~Defendants who are mentally ill, retarded,~~
304 ~~or autistic~~ and who are charged with committing felonies shall
305 receive appropriate treatment or training. In a criminal case
306 involving a client ~~defendant~~ who has been adjudicated incompetent
307 to proceed or not guilty by reason of insanity, a jail may be
308 used as an emergency facility for up to 15 days following ~~from~~
309 the date the department or agency receives a completed copy of
310 the court commitment order containing all ~~the~~ documentation
311 required by the applicable ~~Rules 3.212 and 3.217,~~ Florida Rules
312 of Criminal Procedure. For a forensic client ~~defendant who is~~
313 ~~mentally ill, retarded, or autistic,~~ who is held in a jail
314 awaiting admission to a facility of the department or agency, ~~and~~
315 ~~who has been adjudicated incompetent to proceed or not guilty by~~
316 ~~reason of insanity,~~ evaluation and treatment or training may
317 ~~shall~~ be provided in the jail by the local community mental
318 health provider ~~public receiving facility~~ for mental health
319 services, ~~or~~ by the developmental disabilities ~~services~~ program

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for persons with retardation or autism, the client's physician or psychologist, or any other appropriate program until the client is transferred to a civil or forensic facility ~~the custody of the~~ department.

(b) Forensic clients ~~Mentally ill, retarded, or autistic defendants who are committed to the department pursuant to this chapter and~~ who are initially placed in, or subsequently transferred to, a civil facility as described in part I of chapter 394 or to a residential facility as described in chapter 393 shall have the same rights as other persons committed to these facilities for as long as they remain there.

(2) RIGHT TO TREATMENT.--

(a) The policy of the state is that neither the department nor the agency shall ~~not~~ deny treatment or training to any client and that no services shall be delayed ~~at a facility~~ because the forensic client is indigent pursuant to s. 27.52 and presently unable to pay. However, every reasonable effort to collect appropriate reimbursement for the cost of providing services to clients able to pay for the services, including reimbursement from insurance or other third-party payments, shall be made by facilities providing services pursuant to this chapter and in accordance with the provisions of s. 402.33.

(b) Each forensic client shall be given, at the time of admission and at regular intervals thereafter, a physical examination, which shall include screening for communicable disease by a health practitioner authorized by law to give such screenings and examinations.

(c) Every forensic client ~~committed pursuant to this act~~ shall be afforded the opportunity to participate in activities

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designed to enhance self-image and the beneficial effects of other treatments or training, as determined by the facility.

(d) Not more than 30 days after admission, each client shall have and receive, in writing, an individualized treatment or training plan which the client has had an opportunity to assist in preparing.

(3) RIGHT TO EXPRESS AND INFORMED CONSENT.--

(a) A forensic client ~~committed to the department pursuant to this act~~ shall be asked to give express and informed written consent for treatment. If a client ~~in a forensic facility~~ refuses such treatment as is deemed necessary and essential by the client's multidisciplinary treatment team ~~at the forensic facility~~ for the appropriate care of the client ~~and the safety of the client or others~~, such treatment may be provided under the following circumstances:

1. In an emergency situation in which there is immediate danger to the safety of the client or others, such treatment may be provided upon the written order of a physician for a period not to exceed 48 hours, excluding weekends and legal holidays. If, after the 48-hour period, the client has not given express and informed consent to the treatment initially refused, the administrator or designee of the civil or forensic facility shall, within 48 hours, excluding weekends and legal holidays, petition the committing court or the circuit court serving the county in which the facility is located, at the option of the facility administrator or designee, for an order authorizing the continued treatment of the client. In the interim, the need for treatment shall be reviewed every 48 hours and may be continued without the consent of the client upon the continued written

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378 order of a physician who has determined that the emergency
379 situation continues to present a danger to the safety of the
380 client or others.

381 2. In a situation other than an emergency situation, the
382 administrator or designee of the ~~forensic~~ facility shall petition
383 the court for an order authorizing necessary and essential ~~the~~
384 treatment for ~~to~~ the client. The order shall allow such treatment
385 for a period not to exceed 90 days following ~~from~~ the date of the
386 entry of the order. Unless the court is notified in writing that
387 the client has provided express and informed consent in writing
388 or that the client has been discharged by the committing court,
389 the administrator or designee shall, prior to the expiration of
390 the initial 90-day order, petition the court for an order
391 authorizing the continuation of treatment for another 90-day
392 period. This procedure shall be repeated until the client
393 provides consent or is discharged by the committing court.

394 3. At the hearing on the issue of whether the court should
395 enter an order authorizing treatment for which a client was
396 unable to or ~~has~~ refused to give express and informed consent,
397 the court shall determine by clear and convincing evidence that
398 the client has mental illness, retardation, or autism ~~is mentally~~
399 ~~ill, retarded, or autistic as defined in this chapter~~, that the
400 treatment not consented to is essential to the care of the
401 client, and that the treatment not consented to is not
402 experimental and does not present an unreasonable risk of
403 serious, hazardous, or irreversible side effects. In arriving at
404 the substitute judgment decision, the court must consider at
405 least the following factors:

406 a. The client's expressed preference regarding treatment;

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- b. The probability of adverse side effects;
c. The prognosis without treatment; and
d. The prognosis with treatment.

The hearing shall be as convenient to the client as may be consistent with orderly procedure and shall be conducted in physical settings not likely to be injurious to the client's condition. The court may appoint a general or special magistrate to preside at the hearing. The client or the client's guardian, and the representative, shall be provided with a copy of the petition and the date, time, and location of the hearing. The client has the right to have an attorney represent him or her at the hearing, and, if the client is indigent, the court shall appoint the office of the public defender to represent the client at the hearing. The client may testify or not, as he or she chooses, and has the right to cross-examine witnesses and may present his or her own witnesses.

(b) In addition to the provisions of paragraph (a), in the case of surgical procedures requiring the use of a general anesthetic or electroconvulsive treatment or nonpsychiatric medical procedures, and prior to performing the procedure, written permission shall be obtained from the client, if the client is legally competent, from the parent or guardian of a minor client, or from the guardian of an incompetent client. The administrator or designee of the forensic facility or a designated representative may, with the concurrence of the client's attending physician, authorize emergency surgical or nonpsychiatric medical treatment if such treatment is deemed lifesaving or for a situation threatening serious bodily harm to

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the client and permission of the client or the client's guardian ~~could not~~ ~~cannot~~ be obtained before provision of the needed treatment.

(4) QUALITY OF TREATMENT.--Each forensic client ~~committed pursuant to this chapter~~ shall receive treatment or training suited to the client's needs, which shall be administered skillfully, safely, and humanely with full respect for the client's dignity and personal integrity. Each client shall receive such medical, vocational, social, educational, and rehabilitative services as the client's condition requires to bring about a return to court for disposition of charges or a return to the community. In order to achieve this goal, the department and the agency shall coordinate their services with each other, the Department of Corrections, ~~is directed to coordinate the services of the Mental Health Program Office and the Developmental Disabilities Program Office with all other programs of the department~~ and other appropriate state agencies.

(5) COMMUNICATION, ABUSE REPORTING, AND VISITS.--

~~(a)~~ Each forensic client ~~committed pursuant to the provisions of this chapter~~ has the right to communicate freely and privately with persons outside the facility unless it is determined that such communication is likely to be harmful to the client or others. Clients shall have the right to contact and to receive communication from their attorneys at any reasonable time.

~~(a)(b)~~ Each forensic client ~~committed under the provisions of this chapter~~ shall be allowed to receive, send, and mail sealed, unopened correspondence; and no client's incoming or outgoing correspondence shall be opened, delayed, held, or

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465 censored by the facility unless there is reason to believe that
466 it contains items or substances that ~~which~~ may be harmful to the
467 client or others, in which case the administrator or designee may
468 direct reasonable examination of such mail and may regulate the
469 disposition of such items or substances. For purposes of this
470 paragraph, the term "correspondence" does ~~shall~~ not include
471 parcels or packages. Forensic facilities may ~~are authorized to~~
472 promulgate reasonable institutional policies to provide for the
473 inspection of parcels or packages and for the removal of
474 contraband items for health or security reasons prior to the
475 contents being given to a client.

476 (b)-(e) If a client's right to communicate is restricted by
477 the administrator, written notice of such restriction and the
478 duration of the restriction shall be served on the client or his
479 or her legal guardian or representatives, and such restriction
480 shall be recorded on the client's clinical record with the
481 reasons therefor. The restriction of a client's right to
482 communicate shall be reviewed at least every 7 days.

483 (c)-(d) Each forensic facility shall establish reasonable
484 institutional policies governing visitors, visiting hours, and
485 the use of telephones by clients in the least restrictive manner
486 possible.

487 (d)-(e) Each forensic client ~~committed pursuant to this~~
488 ~~chapter~~ shall have ready access to a telephone in order to report
489 an alleged abuse. The facility or program staff shall orally and
490 in writing inform each client of the procedure for reporting
491 abuse and shall present the information in a language the client
492 understands. A written copy of that procedure, including the
493 telephone number of the central abuse hotline and reporting

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forms, shall be posted in plain view.

(e)~~(f)~~ The department's or agency's forensic facilities shall develop policies providing a procedure for reporting abuse. Facility staff shall be required, as a condition of employment, to become familiar with the procedures for the reporting of abuse.

(6) CARE AND CUSTODY OF PERSONAL EFFECTS OF CLIENTS.--A forensic client's right to possession of clothing and personal effects shall be respected. The department or agency by rule, or the administrator of any forensic facility by written institutional policy, may declare certain items to be hazardous to the health or welfare of clients or others or to the operation of the facility. Such items may be restricted from introduction into the facility or may be restricted from being in a client's possession. The administrator or designee may take temporary custody of such effects when required for medical and safety reasons. Custody of such personal effects shall be recorded in the client's clinical record.

(7) VOTING IN PUBLIC ELECTIONS.--A forensic client ~~committed pursuant to this chapter~~ who is eligible to vote according to the laws of the state has the right to vote in the primary and general elections. The department and agency shall establish rules to enable clients to obtain voter registration forms, applications for absentee ballots, and absentee ballots.

(8) CLINICAL RECORD; CONFIDENTIALITY.--A clinical record for each forensic client shall be maintained. The record shall include data pertaining to admission and such other information as may be required under rules of the department or the agency. Unless waived by express and informed consent of the client or

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the client's legal guardian or, if the client is deceased, by the client's personal representative or by that family member who stands next in line of intestate succession or except as otherwise provided in this subsection, the clinical record is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(a) Such clinical record may be released:

1. To such persons and agencies as are designated by the client or the client's legal guardian.

2. To persons authorized by order of court and to the client's counsel when the records are needed by the counsel for adequate representation.

3. To a qualified researcher, as defined by rule; a staff member of the facility; or an employee of the department or agency when the administrator of the facility, or secretary or director of the department or agency, deems it necessary for treatment of the client, maintenance of adequate records, compilation of treatment data, or evaluation of programs.

4. For statistical and research purposes if the information is abstracted in such a way as to protect the identity of individuals.

5. If a client receiving services ~~pursuant to this chapter~~ has declared an intention to harm other persons. ~~When such a declaration has been made,~~ the administrator shall authorize the release of sufficient information to provide adequate warning to the person threatened with harm by the client, and to the committing court, the state attorney, and the attorney representing the client.

6. To the parent or next of kin of a client ~~mentally ill,~~

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552 ~~retarded, or autistic person~~ who is committed to, or is being
553 served by, a facility or program when such information is limited
554 to that person's service plan and current physical and mental
555 condition. Release of such information shall be in accordance
556 with the code of ethics of the profession involved and must
557 comply with all state and federal laws and regulations pertaining
558 to the release of personal health information.

559 (b) Notwithstanding other provisions of this subsection,
560 the department or agency may request or receive from or provide
561 to any of the following entities client information to facilitate
562 treatment, habilitation, rehabilitation, and continuity of care
563 of any forensic client:

564 1. The Social Security Administration and the United States
565 Department of Veterans Affairs;

566 2. Law enforcement agencies, state attorneys, defense
567 attorneys, and judges in regard to the client's status;

568 3. Jail personnel in the jail in ~~to~~ which a client may be
569 housed ~~returned~~; and

570 4. Community agencies and others expected to provide
571 followup care to the client upon the client's return to the
572 community.

573 (c) The department or agency may provide notice to any
574 client's next of kin or first representative regarding any
575 serious medical illness or the death of the client.

576 (d)1. Any law enforcement agency, facility, or other
577 governmental agency that receives information pursuant to this
578 subsection shall maintain the confidentiality of such information
579 except as otherwise provided herein.

580 2. Any agency or private practitioner who acts in good

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581 faith in releasing information pursuant to this subsection is not
582 subject to civil or criminal liability for such release.

583 (9) HABEAS CORPUS.--

584 (a) At any time, and without notice, a forensic client
585 detained by a facility, or a relative, friend, guardian,
586 representative, or attorney on behalf of such client, may
587 petition for a writ of habeas corpus to question the cause and
588 legality of such detention and request that the committing court
589 issue a writ for release. Each client ~~committed pursuant to this~~
590 ~~chapter~~ shall receive a written notice of the right to petition
591 for a writ of habeas corpus.

592 (b) A client or his or her legal guardian or
593 representatives or attorney may file a petition in the circuit
594 court in the county where the client is committed alleging that
595 the client is being unjustly denied a right or privilege granted
596 herein or that a procedure authorized herein is being abused.
597 Upon the filing of such a petition, the circuit court shall have
598 the authority to conduct a judicial inquiry and to issue any
599 appropriate order to correct an abuse of the provisions of this
600 chapter.

601 (10) TRANSPORTATION.--

602 (a) The sheriff shall consult with the governing board of
603 the county as to the most appropriate and cost-effective means of
604 transportation for forensic clients who have been committed for
605 treatment or training. Such consultation shall include, but is
606 not limited to, consideration of the cost to the county of
607 transportation performed by sheriff's ~~department~~ personnel as
608 opposed to transportation performed by other means and, if
609 sheriff's ~~department~~ personnel are to be used for transportation,

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the effect such use will have, if any, on service delivery levels of the sheriff's road patrol. After such consultation with the governing board of the county, the sheriff shall determine the most appropriate and cost-effective means of transportation for forensic clients committed for treatment or training.

(b) The governing board of each county is authorized to contract with private transport companies for the transportation of such clients to and from a facility.

(c) Any company that transports a client pursuant to this section is considered an independent contractor and is solely liable for the safe and dignified transportation of the client. Any transport company that contracts with the governing board of a county for the transport of clients as provided for in this section shall be insured and provide no less than \$100,000 in liability insurance with respect to the transportation of the clients.

(d) Any company that contracts with a governing board of a county to transport clients shall comply with the applicable rules of the department or agency to ensure the safety and dignity of the clients.

(11) LIABILITY FOR VIOLATIONS.--Any person who violates or abuses any rights or privileges of a forensic client in the custody of the department or agency that are provided under this chapter shall be ~~by this act is~~ liable for damages as determined by law. Any person who acts in good faith in complying with the provisions of this chapter ~~act~~ is immune from civil or criminal liability for his or her actions in connection with the admission, diagnosis, treatment, training, or discharge of a client to or from a facility. However, this subsection does not

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relieve any person from liability if he or she is negligent.

Section 4. Subsections (1), (2), (3), (4), and (5) of section 916.1075, Florida Statutes, are amended to read:

916.1075 Sexual misconduct prohibited; reporting required; penalties.--

(1) As used in this section, the term:

(a) "Covered person" means an employee, ~~"includes any paid staff member,~~ volunteer, or intern of the department or agency; any person under contract with the department or agency; and any person providing care or support to a forensic client on behalf of the department, the agency, or their ~~its~~ providers.

(b) "Sexual activity" means:

1. Fondling the genital area, groin, inner thighs, buttocks, or breasts of a person.

2. The oral, anal, or vaginal penetration by or union with the sexual organ of another or the anal or vaginal penetration of another by any other object.

3. Intentionally touching in a lewd or lascivious manner the breasts, genitals, the genital area, or buttocks, or the clothing covering them, of a person, or forcing or enticing a person to touch the perpetrator.

4. Intentionally masturbating in the presence of another person.

5. Intentionally exposing the genitals in a lewd or lascivious manner in the presence of another person.

6. Intentionally committing any other sexual act that does not involve actual physical or sexual contact with the victim, including, but not limited to, sadomasochistic abuse, sexual bestiality, or the simulation of any act involving sexual

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activity in the presence of a victim.

(c) "Sexual misconduct" means any sexual activity between a covered person ~~an employee~~ and a forensic client in the custody of the department or agency, regardless of the consent of the client. The term does not include an act done for a bona fide medical purpose or an internal search conducted in the lawful performance of duty by a covered person ~~an employee~~.

(2) A covered person ~~An employee~~ who engages in sexual misconduct with a forensic client who resides in a civil or forensic facility commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. Such person ~~An employee~~ may be found guilty of violating this subsection without having committed the crime of sexual battery.

(3) The consent of a forensic ~~the~~ client to sexual activity is not a defense to prosecution under this section.

(4) This section does not apply to a covered person ~~an employee~~ who:

(a) Is legally married to the client; or

(b) Has no reason to believe that the person with whom the covered person ~~employee~~ engaged in sexual misconduct is a client receiving services as described in subsection (2).

(5) A covered person ~~An employee~~ who witnesses sexual misconduct, or who otherwise knows or has reasonable cause to suspect that a person has engaged in sexual misconduct, shall immediately report the incident to the department's central abuse hotline and to the appropriate local law enforcement agency. The covered person ~~Such employee~~ shall also prepare, date, and sign an independent report that specifically describes the nature of the sexual misconduct, the location and time of the incident, and

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the persons involved. For an allegation pertaining to a forensic client committed to the agency, the covered person ~~employee~~ shall deliver the report to the supervisor or program director, who shall provide copies to the agency's ~~is responsible for providing copies to the department's~~ inspector general. For an allegation pertaining to a forensic client committed to the department, the covered person shall deliver the report to the supervisor or program director, who shall provide copies to the department's inspector general. The inspector general shall immediately conduct an appropriate administrative investigation, and, if there is probable cause to believe that sexual misconduct has occurred, the inspector general shall notify the state attorney in the circuit in which the incident occurred.

Section 5. Section 916.1081, Florida Statutes, is amended to read:

916.1081 Escape from program; penalty.--

(1) A forensic client who is ~~A defendant~~ involuntarily committed to the department or agency, who is in the custody of the department or agency, and ~~under the provisions of this chapter~~ who escapes or attempts to escape from a civil or forensic facility or program commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(2) A person who is involuntarily committed to the department or the agency, who is in the custody of the Department of Corrections, and who escapes or attempts to escape from a facility or program commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
Any punishment of imprisonment imposed under this subsection

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shall run consecutive to any former sentence imposed upon the person.

Section 6. Subsection (1) and paragraph (b) of subsection (2) of section 916.1085, Florida Statutes, are amended to read:

916.1085 Introduction or removal of certain articles unlawful; penalty.--

(1)(a) Except as authorized by law or as specifically authorized by the person in charge of a facility, it is unlawful to introduce into or upon the grounds of any facility under the supervision or control of the department or agency, or to take or attempt to take or send therefrom, any of the following articles, which are ~~hereby~~ declared to be contraband for the purposes of this section:

1. Any intoxicating beverage or beverage which causes or may cause an intoxicating effect;

2. Any controlled substance as defined in chapter 893;

3. Any firearm or deadly weapon; or

4. Any other item as determined by the department or the agency, and as designated by ~~departmental~~ rule or ~~by the administrator of any facility, and designated~~ by written institutional policies, to be hazardous to the welfare of clients ~~patients~~ or the operation of the facility.

(b) It is unlawful to transmit to, attempt to transmit to, or cause or attempt to cause to be transmitted to or received by any client of any facility under the supervision or control of the department or agency any article or thing declared by this section to be contraband, at any place that ~~which~~ is outside of the grounds of such facility, except as authorized by law or as specifically authorized by the person in charge of such facility.

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(2)

(b) These provisions shall be enforced by institutional security personnel ~~as defined in s. 916.106(10)~~ or by a law enforcement officer as defined in s. 943.10.

Section 7. Section 916.1091, Florida Statutes, is amended to read:

916.1091 Duties, functions, and powers of institutional security personnel.--In case of emergency, and when necessary to provide protection and security to any client, to the personnel, equipment, buildings, or grounds of a department or agency facility, or to citizens in the surrounding community, institutional security personnel may, when authorized by the administrator of the facility or her or his designee when the administrator is not present, use a chemical weapon against a patient housed in a forensic facility. However, such weapon shall be used only to the extent necessary to provide ~~such~~ protection and security. Under no circumstances shall any ~~such~~ officer carry a chemical weapon on her or his person except during the period of the emergency for which its use was authorized. All chemical weapons shall be placed in secure storage when their use is not authorized as provided in this section.

Section 8. Section 916.1093, Florida Statutes, is amended to read:

916.1093 Operation and administration; rules.--

(1) The department or agency may ~~is authorized to~~ enter into contracts and do such things as may be necessary and incidental to assure compliance with and to carry out the provisions of this chapter in accordance with the stated legislative intent.

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784 (2) The department or agency may ~~has authority to~~ adopt
785 rules pursuant to ss. 120.536(1) and 120.54 to implement the
786 provisions of this chapter. Such rules must address the use of
787 restraint and seclusion in forensic facilities and must be
788 consistent with recognized best practices; prohibit inherently
789 dangerous restraint or seclusion procedures; establish
790 limitations on the use and duration of restraint and seclusion;
791 establish measures to ensure the safety of clients and staff
792 during an incident of restraint or seclusion; establish
793 procedures for staff to follow before, during, and after
794 incidents of restraint or seclusion; establish professional
795 qualifications of and training for staff who may order or be
796 engaged in the use of restraint or seclusion; and establish
797 mandatory reporting, data collection, and data-dissemination
798 procedures and requirements relating to the use of restraint and
799 seclusion, including a requirement that each instance of the use
800 of restraint or seclusion be documented in the facility's client
801 record.

802 Section 9. Subsection (1) of section 916.111, Florida
803 Statutes, is amended to read:

804 916.111 Training of mental health experts.--The evaluation
805 of defendants for competency to proceed or for sanity at the time
806 of the commission of the offense shall be conducted in such a way
807 as to ensure uniform application of the criteria enumerated in
808 Rules 3.210 and 3.216, Florida Rules of Criminal Procedure. The
809 department shall develop, and may contract with accredited
810 institutions:

811 (1) To provide:

812 (a) A plan for training ~~community~~ mental health

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professionals to perform forensic evaluations and to standardize the criteria and procedures to be used in these evaluations;

(b) Clinical protocols and procedures based upon the criteria of Rules 3.210 and 3.216, Florida Rules of Criminal Procedure; and

(c) Training for ~~community~~ mental health professionals in the application of these protocols and procedures in performing forensic evaluations and providing reports to the courts; and

Section 10. Section 916.115, Florida Statutes, is amended to read:

916.115 Appointment of experts.--

~~(1)(a) Annually, the department shall provide the courts with a list of mental health professionals who have completed approved training as experts.~~

~~(b)~~ The court shall ~~may~~ appoint no more than three experts to determine ~~issues of~~ the mental condition of a defendant in a criminal case, including ~~the issues of~~ competency to proceed, insanity, ~~and involuntary hospitalization or placement, and treatment.~~ The panel of experts ~~An expert~~ may evaluate the defendant in jail or in another appropriate local facility or in a facility of the Department of Corrections.

~~(a)(c)~~ To the extent possible, the ~~an~~ appointed experts ~~expert~~ shall have completed forensic evaluator training approved by the department and each shall be ~~either~~ a psychiatrist, licensed psychologist, or physician.

(b) The department shall maintain and annually provide the courts with a list of available mental health professionals who have completed the approved training as experts.

~~(2) Expert witnesses appointed by the court to evaluate the~~

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842 ~~mental condition of a defendant in a criminal case shall be~~
843 ~~allowed reasonable fees for services rendered as evaluators of~~
844 ~~competence or sanity and as witnesses.~~

845 ~~(a)1.~~ The court shall pay for any expert that it appoints
846 by court order, upon motion of counsel for the defendant or the
847 state or upon its own motion. If the defense or the state retains
848 an expert and waives the confidentiality of the expert's report,
849 the court may pay for no more than two additional experts
850 appointed by court order. If an expert appointed by the court
851 upon motion of counsel for the defendant specifically to evaluate
852 the competence of the defendant to proceed also addresses ~~in his~~
853 ~~or her evaluation~~ issues related to sanity as an affirmative
854 defense, the court shall pay only for that portion of the
855 expert's fees relating to the evaluation on competency to
856 proceed, and the balance of the fees shall be chargeable to the
857 defense.

858 ~~(a)2.~~ Pursuant to s. 29.006, the office of the public
859 defender shall pay for any expert retained by the office.

860 ~~(b)3.~~ Pursuant to s. 29.005, the office of the state
861 attorney shall pay for any expert retained by the office and—
862 ~~Notwithstanding subparagraph 1., the office of the state attorney~~
863 ~~shall pay~~ for any expert whom the office retains and whom the
864 office moves the court to appoint in order to ensure that the
865 expert has access to the defendant.

866 ~~(c)4.~~ An expert retained by the defendant who is
867 represented by private counsel appointed under s. 27.5303 shall
868 be paid by the Justice Administrative Commission.

869 ~~(d)5.~~ An expert retained by a defendant who is indigent for
870 costs as determined by the court and who is represented by

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private counsel, other than private counsel appointed under s. 27.5303, on a fee or pro bono basis, or who is representing himself or herself, shall be paid by the Justice Administrative Commission from funds specifically appropriated for these expenses.

(e)~~(b)~~ State employees shall be reimbursed for ~~paid~~ expenses pursuant to s. 112.061.

(f)~~(e)~~ The fees shall be taxed as costs in the case.

(g)~~(d)~~ In order for an expert to be paid for the services rendered, the expert's report and testimony must explicitly address each of the factors and follow the procedures set out in this chapter and in the Florida Rules of Criminal Procedure.

Section 11. Subsections (1), (2), and (3) of section 916.12, Florida Statutes, are amended to read:

916.12 Mental competence to proceed.--

(1) A defendant is incompetent to proceed within the meaning of this chapter if the defendant does not have sufficient present ability to consult with her or his lawyer with a reasonable degree of rational understanding or if the defendant has no rational, as well as factual, understanding of the proceedings against her or him.

(2) Mental health experts appointed pursuant to s. 916.115
~~An expert~~ shall first determine whether the defendant has a
mental illness ~~person is mentally ill~~ and, if so, consider the factors related to the issue of whether the defendant meets the criteria for competence to proceed as described in subsection
(1), ~~that is, whether the defendant has sufficient present~~
~~ability to consult with counsel with a reasonable degree of~~
~~rational understanding and whether the defendant has a rational,~~

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900 ~~as well as factual, understanding of the pending proceedings.~~ A
901 defendant must be evaluated by no fewer than two experts before
902 the court commits the defendant or takes other action authorized
903 by this chapter or the Florida Rules of Criminal Procedure,
904 except if one expert finds that the defendant is incompetent to
905 proceed and the parties stipulate to that finding, the court may
906 commit the defendant or take other action authorized by this
907 chapter or the rules without further evaluation or hearing, or
908 the court may appoint no more than two additional experts to
909 evaluate the defendant. Notwithstanding any stipulation by the
910 state and the defendant, the court may require a hearing with
911 testimony from the expert or experts before ordering the
912 commitment of a defendant.

913 (3) In considering the issue of competence to proceed, an
914 examining expert shall first consider and specifically include in
915 his or her report the defendant's capacity to:

916 (a) Appreciate the charges or allegations against the
917 defendant.†

918 (b) Appreciate the range and nature of possible penalties,
919 if applicable, that may be imposed in the proceedings against the
920 defendant.†

921 (c) Understand the adversarial nature of the legal
922 process.†

923 (d) Disclose to counsel facts pertinent to the proceedings
924 at issue.†

925 (e) Manifest appropriate courtroom behavior.†~~and~~

926 (f) Testify relevantly.†

927 ~~(g) and include in his or her report~~ Any other factor
928 deemed relevant by the expert.

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929 Section 12. Section 916.13, Florida Statutes, is amended to
930 read:

931 916.13 Involuntary commitment of defendant adjudicated
932 incompetent.--

933 (1) Every defendant who is charged with a felony and who is
934 adjudicated incompetent to proceed, ~~pursuant to the applicable~~
935 ~~Florida Rules of Criminal Procedure~~, may be involuntarily
936 committed for treatment upon a finding by the court of clear and
937 convincing evidence that:

938 (a) The defendant has a mental illness ~~is mentally ill~~ and
939 because of the mental illness:

940 1. The defendant is manifestly incapable of surviving alone
941 or with the help of willing and responsible family or friends,
942 including available alternative services, and, without treatment,
943 the defendant is likely to suffer from neglect or refuse to care
944 for herself or himself and such neglect or refusal poses a real
945 and present threat of substantial harm to the defendant's well-
946 being; or ~~and~~

947 2. There is a substantial likelihood that in the near
948 future the defendant will inflict serious bodily harm on herself
949 or himself or another person, as evidenced by recent behavior
950 causing, attempting, or threatening such harm;

951 (b) All available, less restrictive treatment alternatives,
952 including treatment in community residential facilities or
953 community inpatient or outpatient settings, which would offer an
954 opportunity for improvement of the defendant's condition have
955 been judged to be inappropriate; and

956 (c) There is a substantial probability that the mental
957 illness causing the defendant's incompetence will respond to

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958 treatment and the defendant will regain competency to proceed in
959 the reasonably foreseeable future.

960 (2) A defendant who has been charged with a felony and who
961 has been adjudicated incompetent to proceed due to mental
962 illness, and who meets the criteria for involuntary commitment to
963 the department under the provisions of this chapter, may be
964 committed to the department, and the department shall retain and
965 treat the defendant. No later than 6 months after the date of
966 admission and ~~or~~ at the end of any period of extended commitment,
967 or at any time the administrator or designee shall have
968 determined that the defendant has regained competency to proceed
969 or no longer meets the criteria for continued commitment, the
970 administrator or designee shall file a report with the court
971 pursuant to the applicable Florida Rules of Criminal Procedure.

972 Section 13. Section 916.145, Florida Statutes, is amended
973 to read:

974 916.145 ~~Adjudication of incompetency due to mental illness;~~
975 Dismissal of charges.--The charges against any defendant
976 adjudicated incompetent to proceed due to the defendant's mental
977 illness shall be dismissed without prejudice to the state if the
978 defendant remains incompetent to proceed 5 years after such
979 determination, unless the court in its order specifies its
980 reasons for believing that the defendant will become competent to
981 proceed within the foreseeable future and specifies the time
982 within which the defendant is expected to become competent to
983 proceed. The charges against the defendant are dismissed without
984 prejudice to the state to refile the charges should the defendant
985 be declared competent to proceed in the future.

986 Section 14. Section 916.15, Florida Statutes, is amended to

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987 read:

988 916.15 Involuntary commitment of defendant adjudicated not
989 guilty by reason of insanity.--

990 (1) The determination of whether a defendant is not guilty
991 by reason of insanity shall be determined in accordance with Rule
992 3.217, Florida Rules of Criminal Procedure.

993 (2)~~(1)~~ A defendant who is acquitted of criminal charges
994 because of a finding of not guilty by reason of insanity may be
995 involuntarily committed pursuant to such finding if the defendant
996 has a mental illness ~~is mentally ill~~ and, because of the illness,
997 is manifestly dangerous to himself or herself or others.

998 (3)~~(2)~~ Every defendant acquitted of criminal charges by
999 reason of insanity and found to meet the criteria for involuntary
1000 commitment may be committed and treated in accordance with the
1001 provisions of this section and the applicable Florida Rules of
1002 Criminal Procedure. The department shall admit a defendant so
1003 adjudicated to an appropriate facility or program for treatment
1004 and shall retain and treat such defendant. No later than 6 months
1005 after the date of admission, prior to the end of any period of
1006 extended commitment, or at any time the administrator or designee
1007 shall have determined that the defendant no longer meets the
1008 criteria for continued commitment placement, the administrator or
1009 designee shall file a report with the court pursuant to the
1010 applicable Florida Rules of Criminal Procedure.

1011 (4)~~(3)~~ In all proceedings under this section ~~subsection~~,
1012 both the defendant and the state shall have the right to a
1013 hearing before the committing court. Evidence at such hearing may
1014 be presented by the hospital administrator or the administrator's
1015 designee as well as by the state and the defendant. The defendant

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shall have the right to counsel at any such hearing. In the event that a defendant is determined to be indigent pursuant to s. 27.52, the public defender shall represent the defendant. The parties shall have access to the defendant's records at the treating facilities and may interview or depose personnel who have had contact with the defendant at the treating facilities.

Section 15. Section 916.16, Florida Statutes, is amended to read:

916.16 Jurisdiction of committing court.--

(1) The committing court shall retain jurisdiction over ~~in~~ ~~the case of~~ any defendant involuntarily committed due to a determination of incompetency ~~hospitalized as incompetent~~ to proceed due to mental illness or ~~because of~~ a finding of not guilty by reason of insanity pursuant to this chapter. The ~~No~~ ~~such~~ defendant may not be released except by order of the committing court. An ~~The~~ administrative hearing examiner does not ~~shall have no~~ jurisdiction to determine issues of continuing commitment ~~hospitalization~~ or release of any defendant involuntarily committed ~~admitted~~ pursuant to this chapter.

(2) The committing court shall retain jurisdiction in the case of any defendant placed on conditional release pursuant to s. 916.17. ~~No~~ Such defendant may not be released from the conditions of release except by order of the committing court.

Section 16. Section 916.17, Florida Statutes, is amended to read:

916.17 Conditional release.--

(1) Except for an inmate currently serving a prison sentence, ~~The committing court may order a conditional release of any defendant who has been found to be incompetent to proceed or~~

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1045 ~~not guilty by reason of insanity, based on an approved plan for~~
1046 ~~providing appropriate outpatient care and treatment. the~~
1047 committing court may order a conditional release of any defendant
1048 in lieu of an involuntary commitment to a facility pursuant to s.
1049 916.13 or s. 916.15 based upon an approved plan for providing
1050 appropriate outpatient care and treatment. Upon a recommendation
1051 that outpatient treatment of the defendant is appropriate, a
1052 written plan for outpatient treatment, including recommendations
1053 from qualified professionals, must be filed with the court, with
1054 copies to all parties. Such a plan may also be submitted by the
1055 defendant and filed with the court with copies to all parties.
1056 The plan shall include:

1057 (a) Special provisions for residential care or adequate
1058 supervision of the defendant.

1059 (b) Provisions for outpatient mental health services.

1060 (c) If appropriate, recommendations for auxiliary services
1061 such as vocational training, educational services, or special
1062 medical care.

1063
1064 In its order of conditional release, the court shall specify the
1065 conditions of release based upon the release plan and shall
1066 direct the appropriate agencies or persons to submit periodic
1067 reports to the court regarding the defendant's compliance with
1068 the conditions of the release and progress in treatment, with
1069 copies to all parties.

1070 (2) Upon the filing of an affidavit or statement under oath
1071 by any person that the defendant has failed to comply with the
1072 conditions of release, that the defendant's condition has
1073 deteriorated to the point that inpatient care is required, or

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1074 that the release conditions should be modified, the court shall
1075 hold a hearing within 7 days after receipt of the affidavit or
1076 statement under oath. After the hearing, the court may modify the
1077 release conditions. The court may also order that the defendant
1078 be returned to the department if it is found, after the
1079 appointment and report of experts, that the person meets the
1080 criteria for involuntary commitment under s. 916.13 or s. 916.15
1081 ~~treatment~~.

1082 (3) If at any time it is determined after a hearing that
1083 the defendant who has been conditionally released under
1084 subsection (1) no longer requires court-supervised followup care,
1085 the court shall terminate its jurisdiction in the cause and
1086 discharge the defendant.

1087 Section 17. Section 916.301, Florida Statutes, is amended
1088 to read:

1089 916.301 Appointment of experts.--

1090 (1) All evaluations ordered by the court under this part
1091 must be conducted by qualified experts who have expertise in
1092 evaluating persons with retardation or autism. The agency
1093 ~~department~~ shall maintain and provide the courts annually with a
1094 list of available retardation and autism professionals who are
1095 appropriately licensed and qualified to perform evaluations of
1096 defendants alleged to be incompetent to proceed due to
1097 retardation or autism. The courts may use professionals from this
1098 list when appointing experts and ordering evaluations under this
1099 part ~~for defendants suspected of being retarded or autistic~~.

1100 (2) If a defendant's suspected mental condition is
1101 retardation or autism, the court shall appoint a panel of experts
1102 consisting of: ~~two experts, one of whom must be the developmental~~

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~~services program of the department, each of whom will evaluate whether the defendant meets the definition of retardation or autism and, if so, whether the defendant is competent to proceed.~~

(a)(3) At least one, or at the request of any party, two experts ~~the court may appoint one additional expert~~ to evaluate the defendant. The expert appointed by the court will evaluate whether the defendant meets the definition of retardation or autism and, if so, whether the defendant is competent to proceed.

(b)(4) The developmental services program shall select A psychologist selected by the agency who is licensed or authorized by law to practice in this state, with experience in evaluating persons suspected of having retardation or autism, and a social service professional, with experience in working with persons with retardation or autism ~~to evaluate the defendant.~~

1.(a) The psychologist shall evaluate whether the defendant meets the definition of retardation or autism and, if so, whether the defendant is incompetent to proceed due to retardation or autism.

2.(b) The social service professional shall provide a social and developmental history of the defendant.

~~(5) All evaluations ordered by the court must be from qualified experts with experience in evaluating persons with retardation or autism.~~

(3)(6) The panel of experts may examine the defendant in jail, in another appropriate local facility, in a facility of the Department of Corrections, or on an outpatient basis.

(4)(7) Experts ~~Expert witnesses~~ appointed by the court to evaluate the mental condition of a defendant in a criminal case shall be allowed reasonable fees for services rendered as

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1132 evaluators and as witnesses, which shall be paid by the court.
1133 State employees shall be paid expenses pursuant to s. 112.061.
1134 The fees shall be taxed as costs in the case. In order for the
1135 experts to be paid for the services rendered, the reports and
1136 testimony must explicitly address each of the factors and follow
1137 the procedures set out in this chapter and in the Florida Rules
1138 of Criminal Procedure.

1139 Section 18. Subsections (1), (2), and (3) of section
1140 916.3012, Florida Statutes, are amended to read:

1141 916.3012 Mental competence to proceed.--

1142 (1) A defendant whose suspected mental condition is
1143 retardation or autism is incompetent to proceed within the
1144 meaning of this chapter if the defendant does not have sufficient
1145 present ability to consult with the defendant's lawyer with a
1146 reasonable degree of rational understanding or if the defendant
1147 has no rational, as well as factual, understanding of the
1148 proceedings against the defendant.

1149 (2) The Experts in retardation or autism appointed pursuant
1150 to s. 916.301 shall first consider whether the defendant meets
1151 the definition of retardation or autism and, if so, consider the
1152 factors related to the issue of whether the defendant meets the
1153 criteria for competence to proceed as described in subsection
1154 (1); that is, whether the defendant has sufficient present
1155 ability to consult with counsel with a reasonable degree of
1156 rational understanding and whether the defendant has a rational,
1157 as well as factual, understanding of the pending proceedings.

1158 (3) In considering the issue of competence to proceed, the
1159 examining experts shall first consider and specifically include
1160 in their report the defendant's capacity to:

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1161 (a) Appreciate the charges or allegations against the
1162 defendant.†

1163 (b) Appreciate the range and nature of possible penalties,
1164 if applicable, that may be imposed in the proceedings against the
1165 defendant.†

1166 (c) Understand the adversarial nature of the legal
1167 process.†

1168 (d) Disclose to counsel facts pertinent to the proceedings
1169 at issue.†

1170 (e) Manifest appropriate courtroom behavior.† and

1171 (f) Testify relevantly.†

1172 (g) ~~and include in their report~~ Any other factor deemed
1173 relevant by the experts.

1174 Section 19. Section 916.302, Florida Statutes, is amended
1175 to read:

1176 916.302 Involuntary commitment of defendant determined to
1177 be incompetent to proceed ~~due to retardation or autism.~~--

1178 (1) CRITERIA.--Every defendant who is charged with a felony
1179 and who is adjudicated ~~found to be~~ incompetent to proceed due to
1180 retardation or autism, ~~pursuant to this chapter and the~~
1181 ~~applicable Florida Rules of Criminal Procedure~~, may be
1182 involuntarily committed for training upon a finding by the court
1183 of clear and convincing evidence that:

1184 (a) The defendant has retardation or autism ~~is retarded or~~
1185 ~~autistic~~;

1186 (b) There is a substantial likelihood that in the near
1187 future the defendant will inflict serious bodily harm on himself
1188 or herself or another person, as evidenced by recent behavior
1189 causing, attempting, or threatening such harm;

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(c) All available, less restrictive alternatives, including services provided in community residential facilities or other community settings, which would offer an opportunity for improvement of the condition have been judged to be inappropriate; and

(d) There is a substantial probability that the retardation or autism causing the defendant's incompetence will respond to training and the defendant will regain competency to proceed in the reasonably foreseeable future.

(2) ADMISSION TO A FACILITY.--

(a) A defendant who has been charged with a felony and who is found to be incompetent to proceed due to retardation or autism, and who meets the criteria for involuntary commitment to the agency department under the provisions of this chapter, shall be committed to the agency department, and the agency department shall retain and provide appropriate training for ~~serve~~ the defendant. No later than 6 months after the date of admission or at the end of any period of extended commitment or at any time the administrator or designee shall have determined that the defendant has regained competency to proceed or no longer meets the criteria for continued commitment, the administrator or designee shall file a report with the court pursuant to this chapter and the applicable Florida Rules of Criminal Procedure.

(b) A defendant determined to be incompetent to proceed due to retardation or autism may be ordered by a circuit court into a forensic secure facility designated by the agency department for ~~retarded or autistic~~ defendants who have mental retardation or autism.

(c) The agency department may transfer a defendant from a

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1219 designated forensic ~~secure~~ facility to another designated
1220 forensic ~~secure~~ facility and must notify the court of the
1221 transfer within 30 days after the transfer is completed.

1222 (d) The agency ~~department~~ may not transfer a defendant from
1223 a designated forensic ~~secure~~ facility to a civil ~~nonsecure~~
1224 facility without first notifying the court, and all parties, 30
1225 days before the proposed transfer. If the court objects to the
1226 proposed transfer ~~to a nonsecure facility~~, it must send its
1227 written objection to the agency ~~department~~. The agency ~~department~~
1228 may transfer the defendant unless it receives the written
1229 objection from the court within 30 days after the court's receipt
1230 of the notice of the proposed transfer.

1231 (3) PLACEMENT OF DUALY DIAGNOSED DEFENDANTS.--

1232 (a) If a defendant has ~~is~~ both mental retardation or autism
1233 ~~retarded or autistic~~ and has a mental illness ~~mentally ill~~,
1234 evaluations must address which condition is primarily affecting
1235 the defendant's competency to proceed. Referral of the defendant
1236 should be made to a civil or forensic ~~the~~ facility ~~or program~~
1237 most appropriate to address the symptoms that ~~which~~ are the cause
1238 of the defendant's incompetence.

1239 (b) Transfer from one civil or forensic facility ~~or program~~
1240 to another civil or forensic facility ~~or program~~ may occur when,
1241 in the department's and agency's judgment, it is in the
1242 defendant's best treatment or training interests. The department
1243 and agency shall submit an evaluation and justification for the
1244 transfer to the court. The court may consult with an outside
1245 expert if necessary. Transfer will require an amended order from
1246 the committing court.

1247 Section 20. Section 916.3025, Florida Statutes, is amended

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1248 to read:

1249 916.3025 Jurisdiction of committing court.--

1250 (1) The committing court shall retain jurisdiction in the
1251 case of any defendant found to be incompetent to proceed due to
1252 retardation or autism and ordered into a forensic secure facility
1253 designated by the agency department for ~~retarded or autistic~~
1254 defendants who have mental retardation or autism. A ~~No~~ defendant
1255 may not be released except by the order of the committing court.
1256 An administrative hearing examiner does not have jurisdiction to
1257 determine issues of continuing commitment or release of any
1258 defendant involuntarily committed pursuant to this chapter.

1259 (2) The committing court shall retain jurisdiction in the
1260 case of any defendant placed on conditional release pursuant to
1261 s. 916.304. ~~No~~ Such defendant may not be released from the
1262 conditions of release except by order of the committing court.

1263 (3) The committing court shall consider a ~~the~~ petition to
1264 involuntarily admit a defendant whose charges have been dismissed
1265 to residential services provided by the agency department's
1266 ~~developmental services program a person whose charges have been~~
1267 ~~dismissed~~, and, when applicable, to continue secure placement of
1268 such person as provided in s. 916.303. The committing court shall
1269 retain jurisdiction over such person so long as he or she remains
1270 in secure placement or is on conditional release as provided in
1271 s. 916.304. However, upon request the court may transfer
1272 continuing jurisdiction to the court in the circuit where the
1273 defendant resides. The defendant may not be released from an
1274 order for secure placement except by order of the court.

1275 Section 21. Section 916.303, Florida Statutes, is amended
1276 to read:

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1277 916.303 Determination of incompetency due to retardation or
1278 autism; dismissal of charges.--

1279 (1) The charges against any defendant found to be
1280 incompetent to proceed due to retardation or autism shall be
1281 dismissed without prejudice to the state if the defendant remains
1282 incompetent to proceed within a reasonable time after such
1283 determination, not to exceed 2 years, unless the court in its
1284 order specifies its reasons for believing that the defendant will
1285 become competent to proceed within the foreseeable future and
1286 specifies the time within which the defendant is expected to
1287 become competent to proceed. The charges may be refiled by the
1288 state if ~~against the defendant are dismissed without prejudice to~~
1289 ~~the state to refile the charges should~~ the defendant is be
1290 declared competent to proceed in the future.

1291 (2)~~(a)~~ If the charges are dismissed and if the defendant is
1292 considered to lack sufficient capacity to give express and
1293 informed consent to a voluntary application for services and
1294 lacks the basic survival and self-care skills to provide for his
1295 or her well-being or is likely to physically injure himself or
1296 herself or others if allowed to remain at liberty, the agency
1297 ~~department~~, the state attorney, or the defendant's attorney shall
1298 ~~may~~ apply to the committing court to involuntarily admit the
1299 defendant to residential services pursuant to s. 393.11.

1300 (3)~~(b)~~ If the defendant is considered to need involuntary
1301 residential services for reasons described in subsection (2)
1302 ~~under s. 393.11~~ and, further, there is a substantial likelihood
1303 that the defendant will injure another person or continues to
1304 present a danger of escape, and all available less restrictive
1305 alternatives, including services in community residential

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1306 facilities or other community settings, which would offer an
1307 opportunity for improvement of the condition have been judged to
1308 be inappropriate, ~~then the agency person or entity filing the~~
1309 ~~petition under s. 393.11, the state attorney, or the defendant's~~
1310 ~~counsel may request, the petitioning commission, or the~~
1311 ~~department may also petition~~ the committing court to continue the
1312 defendant's placement in a secure facility ~~or program~~ pursuant to
1313 this part section. Any placement so continued under this
1314 subsection must be ~~defendant involuntarily admitted under this~~
1315 ~~paragraph shall have his or her status~~ reviewed by the court at
1316 least annually at a hearing. The annual review and hearing shall
1317 determine whether the defendant continues to meet the criteria
1318 described in this subsection ~~for involuntary residential services~~
1319 and, if so, whether the defendant still requires involuntary
1320 placement in a secure facility ~~or program because the court finds~~
1321 ~~that the defendant is likely to physically injure others as~~
1322 ~~specified in s. 393.11~~ and whether the defendant is receiving
1323 adequate care, treatment, habilitation, and rehabilitation,
1324 including psychotropic medication and behavioral programming.
1325 Notice of the annual review and review hearing shall be given to
1326 the state attorney and ~~to~~ the defendant's attorney. In no
1327 instance may a defendant's placement in a secure facility ~~or~~
1328 ~~program~~ exceed the maximum sentence for the crime for which the
1329 defendant was charged.

1330 Section 22. Section 916.304, Florida Statutes, is amended
1331 to read:

1332 916.304 Conditional release.--

1333 (1) Except for an inmate currently serving a prison
1334 sentence, the committing court may order a conditional release of

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any defendant who has been found to be incompetent to proceed due to retardation or autism, based on an approved plan for providing ~~continuing~~ community-based training. The committing criminal court may order a conditional release of any defendant to a civil facility in lieu of an involuntary commitment to a forensic facility pursuant to s. 916.302. Upon a recommendation that community-based training for the defendant is appropriate, a written plan for community-based training, including recommendations from qualified professionals, may be filed with the court, with copies to all parties. Such a plan may also be submitted by the defendant and filed with the court, with copies to all parties. The plan must ~~shall~~ include:

(a) Special provisions for residential care and adequate supervision of the defendant, including recommended location of placement.

(b) Recommendations for auxiliary services such as vocational training, psychological training, educational services, leisure services, and special medical care.

In its order of conditional release, the court shall specify the conditions of release based upon the release plan and shall direct the appropriate agencies or persons to submit periodic reports to the courts regarding the defendant's compliance with the conditions of the release and progress in training, with copies to all parties.

(2) Upon the filing of an affidavit or statement under oath by any person that the defendant has failed to comply with the conditions of release, that the defendant's condition has deteriorated, or that the release conditions should be modified,

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the court shall hold a hearing within 7 days after receipt of the affidavit or statement under oath. With notice to the court, the agency may detain a defendant in a forensic facility until the hearing occurs. After the hearing, the court may modify the release conditions. The court may also order that the defendant be placed into more appropriate programs for further training or may order the defendant to be committed ~~returned~~ to a forensic facility ~~involuntary residential services of the department~~ if it is found, after the appointment and report of experts, that the defendant meets the criteria for placement in a forensic facility ~~involuntary residential services~~.

(3) If at any time it is determined after a hearing that the defendant conditionally released under subsection (1) no longer requires court-supervised followup care, the court shall terminate its jurisdiction in the cause and discharge the defendant.

Section 23. Subsection (1) of section 921.137, Florida Statutes, is amended to read:

921.137 Imposition of the death sentence upon a ~~mentally retarded~~ defendant with mental retardation prohibited.--

(1) As used in this section, the term "mental retardation" means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the period from conception to age 18. The term "significantly subaverage general intellectual functioning," for the purpose of this section, means performance that is two or more standard deviations from the mean score on a standardized intelligence test specified in the rules of the Agency for Persons with Disabilities ~~Department of Children and Family~~

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1393 ~~Services~~. The term "adaptive behavior," for the purpose of this
1394 definition, means the effectiveness or degree with which an
1395 individual meets the standards of personal independence and
1396 social responsibility expected of his or her age, cultural group,
1397 and community. The Agency for Persons with Disabilities
1398 ~~Department of Children and Family Services~~ shall adopt rules to
1399 specify the standardized intelligence tests as provided in this
1400 subsection.

1401 Section 24. Paragraphs (d), (e), (g), and (h) of subsection
1402 (1), subsections (2), (3), and (4), paragraph (b) of subsection
1403 (5), and paragraph (a) of subsection (6) of section 985.223,
1404 Florida Statutes, are amended to read:

1405 985.223 Incompetency in juvenile delinquency cases.--

1406 (1) If, at any time prior to or during a delinquency case,
1407 the court has reason to believe that the child named in the
1408 petition may be incompetent to proceed with the hearing, the
1409 court on its own motion may, or on the motion of the child's
1410 attorney or state attorney must, stay all proceedings and order
1411 an evaluation of the child's mental condition.

1412 (d) For incompetency evaluations related to mental illness,
1413 the Department of Children and Family Services shall maintain and
1414 annually provide the courts with a list of available mental
1415 health professionals who have completed a training program
1416 approved by the Department of Children and Family Services to
1417 perform the evaluations.

1418 (e) For incompetency evaluations related to mental
1419 retardation or autism, the court shall order the Agency for
1420 Persons with Disabilities ~~Developmental Disabilities Program~~
1421 ~~Office within the Department of Children and Family Services~~ to

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1422 examine the child to determine if the child meets the definition
1423 of "retardation" or "autism" in s. 393.063 and, if so, whether
1424 the child is competent to proceed with delinquency proceedings.

1425 (g) Immediately upon the filing of the court order finding
1426 a child incompetent to proceed, the clerk of the court shall
1427 notify the Department of Children and Family Services and the
1428 Agency for Persons with Disabilities and fax or hand deliver to
1429 the department and to the agency ~~of Children and Family Services~~
1430 a referral packet that ~~which~~ includes, at a minimum, the court
1431 order, the charging documents, the petition, and the court-
1432 appointed evaluator's reports.

1433 (h) After placement of the child in the appropriate
1434 setting, the Department of Children and Family Services in
1435 consultation with the Agency for Persons with Disabilities, as
1436 appropriate, must, within 30 days after placement of the
1437 ~~Department of Children and Family Services places~~ the child,
1438 prepare and submit to the court a treatment or training plan for
1439 the child's restoration of competency. A copy of the ~~treatment~~
1440 plan must be served upon the child's attorney, the state
1441 attorney, and the attorneys representing the Department of
1442 Juvenile Justice.

1443 (2) A child ~~who is mentally ill or retarded,~~ who is
1444 adjudicated incompetent to proceed, and who has committed a
1445 delinquent act or violation of law, either of which would be a
1446 felony if committed by an adult, must be committed to the
1447 Department of Children and Family Services for treatment or
1448 training. A child who has been adjudicated incompetent to proceed
1449 because of age or immaturity, or for any reason other than for
1450 mental illness or retardation or autism, must not be committed to

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the department or to the Department of Children and Family Services for restoration-of-competency treatment or training services. For purposes of this section, a child who has committed a delinquent act or violation of law, either of which would be a misdemeanor if committed by an adult, may not be committed to the department or to the Department of Children and Family Services for restoration-of-competency treatment or training services.

(3) If the court finds that a child has mental illness, mental retardation, or autism ~~is mentally ill or retarded~~ and adjudicates the child incompetent to proceed, the court must also determine whether the child meets the criteria for secure placement. A child may be placed in a secure facility or program if the court makes a finding by clear and convincing evidence that:

(a) The child has mental illness, mental retardation, or autism ~~is mentally ill~~ and because of the mental illness, mental retardation, or autism, ~~or the child is mentally retarded and because of the mental retardation:~~

1. The child is manifestly incapable of surviving with the help of willing and responsible family or friends, including available alternative services, and without treatment or training the child is likely to either suffer from neglect or refuse to care for self, and such neglect or refusal poses a real and present threat of substantial harm to the child's well-being; or

2. There is a substantial likelihood that in the near future the child will inflict serious bodily harm on self or others, as evidenced by recent behavior causing, attempting, or threatening such harm; and

(b) All available less restrictive alternatives, including

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1480 treatment or training in community residential facilities or
1481 community settings which would offer an opportunity for
1482 improvement of the child's condition, are inappropriate.

1483 (4) A child who is determined to have mental retardation or
1484 autism ~~be mentally ill or retarded~~, who has been adjudicated
1485 incompetent to proceed, and who meets the criteria set forth in
1486 subsection (3), must be committed to the Department of Children
1487 and Family Services, and receive treatment or training ~~the~~
1488 ~~Department of Children and Family Services must treat or train~~
1489 ~~the child~~ in a secure facility or program that ~~which~~ is the least
1490 restrictive alternative consistent with public safety. Any
1491 placement of a child to a secure residential program must be
1492 separate from adult forensic programs. If the child attains
1493 competency, then custody, case management, and supervision of the
1494 child will be transferred to the department in order to continue
1495 delinquency proceedings; however, the court retains authority to
1496 order the Department of Children and Family Services to provide
1497 continued treatment or training to maintain competency.

1498 (a) A child adjudicated incompetent due to mental
1499 retardation or autism may be ordered into a secure program or
1500 facility designated by the Department of Children and Family
1501 Services for ~~retarded~~ children with mental retardation or autism.

1502 (b) A child adjudicated incompetent due to mental illness
1503 may be ordered into a secure program or facility designated by
1504 the Department of Children and Family Services for ~~mentally ill~~
1505 children have mental illnesses.

1506 (c) Whenever a child is placed in a secure residential
1507 facility, the department will provide transportation to the
1508 secure residential facility for admission and from the secure

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residential facility upon discharge.

(d) The purpose of the treatment or training is the restoration of the child's competency to proceed.

(e) The service provider must file a written report with the court pursuant to the applicable Florida Rules of Juvenile Procedure not later than 6 months after the date of commitment, or at the end of any period of extended treatment or training, and at any time the Department of Children and Family Services, through its service provider determines the child has attained competency or no longer meets the criteria for secure placement, or at such shorter intervals as ordered by the court. A copy of a written report evaluating the child's competency must be filed by the provider with the court and with the state attorney, the child's attorney, the department, and the Department of Children and Family Services.

(5)

(b) Whenever the provider files a report with the court informing the court that the child will never become competent to proceed, the Department of Children and Family Services will develop a discharge plan for the child prior to any hearing determining whether the child will ever become competent to proceed and send the. ~~The Department of Children and Family Services must send the proposed discharge~~ plan to the court, the state attorney, the child's attorney, and the attorneys representing the Department of Juvenile Justice. The provider will continue to provide services to the child until the court issues the order finding the child will never become competent to proceed.

(6) (a) If a child is determined to have mental illness,

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1538 mental retardation, or autism ~~be mentally ill or retarded~~ and is
1539 found to be incompetent to proceed but does not meet the criteria
1540 set forth in subsection (3), the court shall commit the child to
1541 the Department of Children and Family Services and shall order
1542 the Department of Children and Family Services to provide
1543 appropriate treatment and training in the community. The purpose
1544 of the treatment or training is the restoration of the child's
1545 competency to proceed.

1546 Section 25. Paragraph (b) of subsection (14) of section
1547 287.057, Florida Statutes, is amended to read:

1548 287.057 Procurement of commodities or contractual
1549 services.--

1550 (14)

1551 (b) Notwithstanding paragraph (a), the Department of
1552 Children and Family Services may enter into agreements, not to
1553 exceed 20 years, with a private provider to finance, design, and
1554 construct a forensic treatment facility, as defined in s.
1555 916.106(10)(8), of at least 200 beds and to operate all aspects
1556 of daily operations within the forensic treatment facility. The
1557 selected contractor is authorized to sponsor the issuance of tax-
1558 exempt certificates of participation or other securities to
1559 finance the project, and the state is authorized to enter into a
1560 lease-purchase agreement for the forensic treatment facility.
1561 This paragraph expires July 1, 2006.

1562 Section 26. Paragraph (r) of subsection (3) of section
1563 408.036, Florida Statutes, is amended to read:

1564 408.036 Projects subject to review; exemptions.--

1565 (3) EXEMPTIONS.--Upon request, the following projects are
1566 subject to exemption from the provisions of subsection (1):

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(r) For beds in state mental health treatment facilities operated under s. 394.455(30) and state mental health forensic facilities operated under chapter 916 ~~s. 916.106(8)~~.

Section 27. Paragraph (a) of subsection (4) of section 943.0585, Florida Statutes, is amended to read:

943.0585 Court-ordered expunction of criminal history records.--The courts of this state have jurisdiction over their own procedures, including the maintenance, expunction, and correction of judicial records containing criminal history information to the extent such procedures are not inconsistent with the conditions, responsibilities, and duties established by this section. Any court of competent jurisdiction may order a criminal justice agency to expunge the criminal history record of a minor or an adult who complies with the requirements of this section. The court shall not order a criminal justice agency to expunge a criminal history record until the person seeking to expunge a criminal history record has applied for and received a certificate of eligibility for expunction pursuant to subsection (2). A criminal history record that relates to a violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794, s. 796.03, s. 800.04, s. 817.034, s. 825.1025, s. 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s. 916.1075, or a violation enumerated in s. 907.041 may not be expunged, without regard to whether adjudication was withheld, if the defendant was found guilty of or pled guilty or nolo contendere to the offense, or if the defendant, as a minor, was found to have committed, or pled guilty or nolo contendere to committing, the offense as a delinquent act. The court may only order expunction of a criminal history record pertaining to one arrest or one incident of

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1596 alleged criminal activity, except as provided in this section.
1597 The court may, at its sole discretion, order the expunction of a
1598 criminal history record pertaining to more than one arrest if the
1599 additional arrests directly relate to the original arrest. If the
1600 court intends to order the expunction of records pertaining to
1601 such additional arrests, such intent must be specified in the
1602 order. A criminal justice agency may not expunge any record
1603 pertaining to such additional arrests if the order to expunge
1604 does not articulate the intention of the court to expunge a
1605 record pertaining to more than one arrest. This section does not
1606 prevent the court from ordering the expunction of only a portion
1607 of a criminal history record pertaining to one arrest or one
1608 incident of alleged criminal activity. Notwithstanding any law to
1609 the contrary, a criminal justice agency may comply with laws,
1610 court orders, and official requests of other jurisdictions
1611 relating to expunction, correction, or confidential handling of
1612 criminal history records or information derived therefrom. This
1613 section does not confer any right to the expunction of any
1614 criminal history record, and any request for expunction of a
1615 criminal history record may be denied at the sole discretion of
1616 the court.

1617 (4) EFFECT OF CRIMINAL HISTORY RECORD EXPUNCTION.--Any
1618 criminal history record of a minor or an adult which is ordered
1619 expunged by a court of competent jurisdiction pursuant to this
1620 section must be physically destroyed or obliterated by any
1621 criminal justice agency having custody of such record; except
1622 that any criminal history record in the custody of the department
1623 must be retained in all cases. A criminal history record ordered
1624 expunged that is retained by the department is confidential and

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exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution and not available to any person or entity except upon order of a court of competent jurisdiction. A criminal justice agency may retain a notation indicating compliance with an order to expunge.

(a) The person who is the subject of a criminal history record that is expunged under this section or under other provisions of law, including former s. 893.14, former s. 901.33, and former s. 943.058, may lawfully deny or fail to acknowledge the arrests covered by the expunged record, except when the subject of the record:

1. Is a candidate for employment with a criminal justice agency;

2. Is a defendant in a criminal prosecution;

3. Concurrently or subsequently petitions for relief under this section or s. 943.059;

4. Is a candidate for admission to The Florida Bar;

5. Is seeking to be employed or licensed by or to contract with the Department of Children and Family Services or the Department of Juvenile Justice or to be employed or used by such contractor or licensee in a sensitive position having direct contact with children, the developmentally disabled, the aged, or the elderly as provided in s. 110.1127(3), s. 393.063, s. 394.4572(1), s. 397.451, s. 402.302(3), s. 402.313(3), s. 409.175(2)(i), s. 415.102(4), chapter 916 ~~s. 916.106(10) and (13)~~, s. 985.407, or chapter 400; or

6. Is seeking to be employed or licensed by the Department of Education, any district school board, any university laboratory school, any charter school, any private or parochial

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1654 school, or any local governmental entity that licenses child care
1655 facilities.

1656 Section 28. Paragraph (a) of subsection (4) of section
1657 943.059, Florida Statutes, is amended to read:

1658 943.059 Court-ordered sealing of criminal history
1659 records.--The courts of this state shall continue to have
1660 jurisdiction over their own procedures, including the
1661 maintenance, sealing, and correction of judicial records
1662 containing criminal history information to the extent such
1663 procedures are not inconsistent with the conditions,
1664 responsibilities, and duties established by this section. Any
1665 court of competent jurisdiction may order a criminal justice
1666 agency to seal the criminal history record of a minor or an adult
1667 who complies with the requirements of this section. The court
1668 shall not order a criminal justice agency to seal a criminal
1669 history record until the person seeking to seal a criminal
1670 history record has applied for and received a certificate of
1671 eligibility for sealing pursuant to subsection (2). A criminal
1672 history record that relates to a violation of s. 393.135, s.
1673 394.4593, s. 787.025, chapter 794, s. 796.03, s. 800.04, s.
1674 817.034, s. 825.1025, s. 827.071, chapter 839, s. 847.0133, s.
1675 847.0135, s. 847.0145, s. 893.135, s. 916.1075, or a violation
1676 enumerated in s. 907.041 may not be sealed, without regard to
1677 whether adjudication was withheld, if the defendant was found
1678 guilty of or pled guilty or nolo contendere to the offense, or if
1679 the defendant, as a minor, was found to have committed or pled
1680 guilty or nolo contendere to committing the offense as a
1681 delinquent act. The court may only order sealing of a criminal
1682 history record pertaining to one arrest or one incident of

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1683 alleged criminal activity, except as provided in this section.
1684 The court may, at its sole discretion, order the sealing of a
1685 criminal history record pertaining to more than one arrest if the
1686 additional arrests directly relate to the original arrest. If the
1687 court intends to order the sealing of records pertaining to such
1688 additional arrests, such intent must be specified in the order. A
1689 criminal justice agency may not seal any record pertaining to
1690 such additional arrests if the order to seal does not articulate
1691 the intention of the court to seal records pertaining to more
1692 than one arrest. This section does not prevent the court from
1693 ordering the sealing of only a portion of a criminal history
1694 record pertaining to one arrest or one incident of alleged
1695 criminal activity. Notwithstanding any law to the contrary, a
1696 criminal justice agency may comply with laws, court orders, and
1697 official requests of other jurisdictions relating to sealing,
1698 correction, or confidential handling of criminal history records
1699 or information derived therefrom. This section does not confer
1700 any right to the sealing of any criminal history record, and any
1701 request for sealing a criminal history record may be denied at
1702 the sole discretion of the court.

1703 (4) EFFECT OF CRIMINAL HISTORY RECORD SEALING.--A criminal
1704 history record of a minor or an adult which is ordered sealed by
1705 a court of competent jurisdiction pursuant to this section is
1706 confidential and exempt from the provisions of s. 119.07(1) and
1707 s. 24(a), Art. I of the State Constitution and is available only
1708 to the person who is the subject of the record, to the subject's
1709 attorney, to criminal justice agencies for their respective
1710 criminal justice purposes, or to those entities set forth in
1711 subparagraphs (a)1., 4., 5., and 6. for their respective

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licensing and employment purposes.

(a) The subject of a criminal history record sealed under this section or under other provisions of law, including former s. 893.14, former s. 901.33, and former s. 943.058, may lawfully deny or fail to acknowledge the arrests covered by the sealed record, except when the subject of the record:

1. Is a candidate for employment with a criminal justice agency;

2. Is a defendant in a criminal prosecution;

3. Concurrently or subsequently petitions for relief under this section or s. 943.0585;

4. Is a candidate for admission to The Florida Bar;

5. Is seeking to be employed or licensed by or to contract with the Department of Children and Family Services or the Department of Juvenile Justice or to be employed or used by such contractor or licensee in a sensitive position having direct contact with children, the developmentally disabled, the aged, or the elderly as provided in s. 110.1127(3), s. 393.063, s. 394.4572(1), s. 397.451, s. 402.302(3), s. 402.313(3), s. 409.175(2)(i), s. 415.102(4), s. 415.103, chapter 916 ~~s. 916.106(10) and (13)~~, s. 985.407, or chapter 400; or

6. Is seeking to be employed or licensed by the Department of Education, any district school board, any university laboratory school, any charter school, any private or parochial school, or any local governmental entity that licenses child care facilities.

Section 29. This act shall take effect upon becoming a law.